

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

DIAMOND D. BLAIR,

Appellant.

DOCKET NUMBER WD76357

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 15, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable David M. Byrn, Judge

JUDGES

Division III: Newton, P.J., and Pfeiffer and Martin, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
Andrew C. Hooper, Assistant Attorney General
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Attorneys for Respondent,

Rebecca L. Kurz, Special Public Defender
Mission, KS

Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **July 15, 2014**
DIAMOND D. BLAIR,)
)
Appellant.)

WD76357

Jackson County

Before Division III Judges: Thomas H. Newton, Presiding Judge, and Mark D. Pfeiffer and Cynthia L. Martin, Judges

Diamond D. Blair appeals the judgment of the Circuit Court of Jackson County, Missouri, finding him guilty, after a jury trial, of one count of second-degree felony murder, one count of first-degree robbery, and two counts of armed criminal action. On appeal, Blair contends that the trial court erred in overruling Blair's motion for judgment of acquittal because there was no evidence that any property was stolen from the victim. Blair also contends that the trial court erred in admitting certain evidence.

AFFIRMED IN PART; REVERSED IN PART.

Division III holds:

The State did not present substantial evidence to support an inference that a cell phone or any other property was stolen from the victim in this case, making his conviction for first-degree robbery improper. There was no evidence that the victim had a phone in his possession available to be stolen at the time that he was killed. The State also expressly disclaimed any intention to have the court instruct the jury on the lesser-included offense of attempted robbery. This court, therefore, reverses the conviction for robbery and the attendant count of armed criminal action.

The State did, however, charge Blair with felony murder based upon robbery or attempted robbery of the victim. There was substantial evidence to support a finding that the victim was killed during an attempt by Blair and his accomplices to rob him. Blair's conviction

for second-degree felony murder and his conviction for the corresponding count of armed criminal action are, therefore, affirmed.

Opinion by: Mark D. Pfeiffer, Judge

July 15, 2014

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